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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services	)	CC Docket No. 95-20

COMMENTS OF THE CALIFORNIA CABLE TELEVISION ASSOCIATION

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April 7, 1995

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The California Cable Television Association ("CCTA") hereby submits comments in the above-captioned proceeding. CCTA is a trade association representing cable television operators with over 400 cable television systems in California, including both small rural systems and national multiple system operators, as well as cable television programmers and suppliers.

I. Introduction and Summary

For the second time in four years, the United States Court of Appeals for the Ninth Circuit has concluded that the FCC's scheme for regulating the provision of enhanced services by local telephone companies is flawed.[1] The most recent opinion faults the Commission for failing to explain why its decision to abandon the requirement that local telephone companies provide enhanced services through structurally-separate subsidiaries leaves competitors adequately protected from anticompetitive behavior.

[1] California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III).

On remand from the Court, the Commission has requested comment on whether structural separation should be reimposed for some or all Bell Operating Company ("BOC") enhanced services.[2] CCTA submits that, in order to deter anticompetitive behavior, the Commission must, at the very least, require local exchange carriers ("LECs") to provide video services through separate subsidiaries.[3]

The public interest analysis required by the Court demonstrates unequivocally that telephone companies have both the incentive and ability to abuse their monopoly control over regulated facilities to disadvantage competing video providers. In contrast, there are very few, if any, efficiencies to be gained by lifting the separate subsidiary requirement in this context. Indeed, rather than increasing the competitiveness of the market for video services, removal of the structural separation requirement will defeat the very objectives the Commission hopes to accomplish in this area.

Given the one-sided results of this cost-benefit analysis, CCTA urges the Commission to require LECs to provide cable

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[2] Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, Notice of Proposed Rulemaking, CC Docket No. 95-20, FCC 95-48 (released February 21, 1995).

[3] While the Commission's structural separation requirement applied only to BOCs, CCTA believes that, given the dominance of each LEC in its service area, there is no reason to distinguish between BOCs and other telephone companies for purposes of establishing safeguards for the provision of video services. Accordingly, in suggesting appropriate Commission action in these comments, CCTA refers to "LECs" or "local telephone companies" in place of "BOCs".

television and other video services through fully-separated subsidiaries. Under this regime, a subsidiary would be required to deal with its the parent company on an arms' length basis and to conduct all business apart from parent's regulated operations. Structural separation is thus a critical means of ensuring that LEC video operations are not given an unfair advantage over other video service providers. In this manner, the Commission will serve the public interest.

II. Background

In 1980, as part of its efforts to address the increasingly blurred line between computer and communications services, the Commission adopted a regulatory framework that distinguished between "basic" services (common carrier services offered by telephone companies) and "enhanced" services (services offered over the telecommunications network that employ computer processing, provide the subscriber additional or different information, or involve subscriber interaction with stored information).[4] In Computer II, the Commission decided not to regulate enhanced services under Title II of the Communications Act of 1934 (the "Act").[5] It determined, however, that to

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[4] See 47 CFR 64.702(a); Amendment of Section 64.702 of the Commission s Rules and Regulations (Computer II), 77 FCC 2d 384, 419-20, paras. 114-18 (1980) (Final Decision), recon., 84 FCC 2d 50 (1981) (Reconsideration Order), further recon., 88 FCC 2d 512 (1981) (Further Reconsideration Order), affirmed sub nom. Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

[5] Computer II, 77 FCC 2d. 384.

promote competition and to protect competitive providers of similar or like services, the dominant local telephone companies must provide enhanced services through fully separate subsidiaries.[6] Specifically, the Commission noted that the separation requirement would reduce the substantial opportunities for undetected cross-subsidization by regulated market entities.[7] Further, the Commission found that the separate subsidiary requirement was necessary to prevent local telephone companies from using their ownership of basic transmission facilities to create a bottleneck in the supply of enhanced services.[8] It concluded that such an artificial bottleneck would force competitors out of the market and deter potential entrants, undermining the Commission's efforts to foster a competitive industry.[9]

Despite these concerns, six years later in Computer III, the Commission decided to abandon the separate subsidiary requirement and, in its place, adopt a scheme of nonstructural safeguards. The Commission concluded that these safeguards would provide sufficient protection for competing enhanced service providers

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[6] Id. at 457-66.

[7] Id. at 463.

[8] Id.

[9] Id. at 463-64. Notably, the FCC stated in Computer II that the separation policy should not diminish the incentives or ability of telephone companies to innovate in the provision of enhanced services. Id. at 465.

("ESPs") and would avoid the inefficiencies associated with structural separation.[10]

Upon judicial review in 1990, the Ninth Circuit disagreed with the Commission's conclusion and vacated three orders in the Computer III proceeding.[11] It held that the Commission had not adequately justified its decision to rely on non-structural cost accounting safeguards to protect against improper cross-subsidization.[12]

In response, the FCC adopted the BOC Safeguards Order, which purported to explain why independent ESPs would not be harmed by elimination of the separate subsidiary requirement.[13] But, last year on review, the Ninth Circuit Court of Appeals remanded this case to the Commission again for failing to explain why removal

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[10] Amendment of Section 64.702 of the Commission's Rule and Regulations, (Computer III), CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), recon., 2 FCC Rcd 3035 (1987) (Phase I Reconsideration Order), further recon., 3 FCC Rcd 1135 (1988) (Phase I Further Reconsideration Order), second further recon., 4 FCC Rcd 5927 (1989) (Phase I Second Further Reconsideration), Phase I Order and Phase I Reconsideration Order vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990) (California I); Phase II, 2 FCC Rcd 3072 (1987) (Phase II Order), recon., 3 FCC Rcd 1150 (1988) (Phase II Further Reconsideration Order), Phase II Order vacated, California v. FCC, 905 F.2d 1217; Computer III Remand Proceedings, 5 FCC Rcd 7719 (1990) (ONA Remand Order), recon., 7 FCC Rcd 909 (1992), pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order); BOC Safeguards Order vacated in part, California v. FCC, 39 F.3d 919.

[11] California I, 905 F.2d 1217.

[12] Id.

[13] BOC Safeguards Order, 6 FCC Rcd. 7571.

of the structural separation requirement would be in the public interest.[14] This time, the Court focussed on potential BOC discrimination against ESPs in light of the Commission's failure to live up to representations that BOC networks would be fundamentally unbundled as a condition precedent to lifting the requirement. The Court stated that although the Commission recognized that its Open Network Architecture ("ONA") requirements, which were touted "as a key safeguard against access discrimination" in Computer III, were not technically attainable, the FCC had failed to adjust its cost-benefit analysis accordingly.[15] Consequently, the Court mandated that the Commission explain how its proposed non-structural safeguards would protect against unlawful discrimination.[16]

III. Structural Separation for LEC Video Services is Required

The Court in California III made clear that terminating the structural separation requirement would be reasonable only if the Commission could show that the costs of separate subsidiaries outweigh the benefits of a nonstructural regime. But, as the Court noted, "the BOCs have the incentive to discriminate and the ability to exploit their monopoly control over the local networks to frustrate regulators' attempts to prevent anticompetitive

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[14] California III, 39 F.3d 919.

[15] Id. at 930

[16] Id.

behavior."[17] Moreover, the Court expressed deep skepticism about the Commission's analysis of the costs of structural separation. Indeed, it stressed that the only concrete example the FCC has ever given to support its contention that structural separation impeded innovation in the provision of enhanced services was the prevention of the development of the voice mail market for small customers.[18] Thus, CCTA asserts that it is unlikely that the Commission can make the legal showing required by the Ninth Circuit to end the separate subsidiary requirement.

Moreover, a cost-benefit analysis weighs heavily in favor of structural separation for LEC provision of video services. Without separate subsidiaries for such video programming services, the risk of anticompetitive behavior simply outweighs the costs of requiring structurally-separated subsidiaries.

A. Telephone Company Provision of Video Services

A number of courts have recently held the telephone company-cable television cross-ownership ban unconstitutional[19] and, pending appeal, the telephone companies that have prevailed in

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[17] Id. at 929.

[18] Id. at 925.

[19] 47 U.S.C. § 533(b); See e.g., Chesapeake & Potomac Tel. Co. of Virginia v. United States, 42 F.3d 181 (1994); U S West, Inc. v. United States, No. 94-35775, D.C. No. CV-93-01523-BRJ (9th Cir. Dec. 30, 1994).

those cases may provide in-region cable service.[20] Thus, the Commission is now faced with the unique circumstance of dominant local telephone companies proposing to offer basic telephone service and cable service, often over an integrated facility, within their regions.[21]

Under the Cable Act of 1984, when a telephone company provides video programming, it is acting as a "cable operator" within the statutory definition of that term and, therefore, its video operations are subject to the cable regulatory scheme.[22] CCTA believes that, in such cases, additional safeguards are needed to protect against unlawful access discrimination and

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[20] Public Notice, Commission Announces Enforcement Policy Regarding Telephone Company Ownership of Cable Television Systems, DA 95-722 (April 3, 1995).

[21] In its proposal to provide video dialtone service, for example, Pacific Bell has chosen a hybrid fiber/coaxial cable architecture, which it intends to carry video, voice and other enhanced services. Under Pacific's proposal, this would be accomplished by transferring funds from Pacific's ratepayers; in effect, using "current consumers to invest in tomorrow's services." See Reply of the California Cable Television Association to Pacific Bell's Opposition to Petitions to Deny, File Nos. W-P-C 6913, 6914, 6915, 6916, filed March 11, 1994. (regarding Pacific's request for Section 214 authority to construct video dialtone facilities). (CCTA March 11, 1994 Reply to Pacific Bell). See also Letter to Kathleen M.H. Wallman, Chief Common Carrier Bureau, Federal Communications Commission, from Alan J. Gardner, Vice President, Regulatory & Legal Affairs, California Cable Television Association, filed January 6, 1995 (re: File Nos. W-P-C 6913, 6914, 6915, and 6916); Letter to Kathleen M.H. Wallman, Chief Common Carrier Bureau, Federal Communications Commission, from Alan J. Gardner, Vice President, Regulatory & Legal Affairs, California Cable Television Association, filed January 20, 1995 (re: File Nos. W-P-C 6913, 6914, 6915, and 6916).

[22] See Comments of the California Cable Television Association on the Fourth Further Notice of Proposed Rulemaking, CC Docket No. 87-266, filed March 21, 1995.

improper cross-subsidization by the telephone companies. Structural separation between a LEC's telephone and video services is, in fact, one of the most important safeguards available to help the Commission deter anticompetitive activities. Given the history of the Commission's proceedings that address anticompetitive conduct by LECs, CCTA asserts that any scheme proposing less than full structural separation for LEC video services will not pass muster under California III.

B. Cost/Benefit Analysis

1. Anticompetitive Behavior is Likely

Telephone companies are monopoly providers of essential and unique facilities and, as such, have a powerful incentive to utilize their control over, and market power with respect to, their regulated resources to benefit their competitive services. As noted by the Ninth Circuit, the LECs have demonstrated their ability to exploit the control they have over monopoly enterprises to thwart regulators' attempts to deter such anticompetitive behavior.[23]

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[23] California III, 39 F.3d at 929, citing decision of the Georgia Public Service Commission in its investigation into BellSouth's MemoryCall Service. In the Matter of the Commission's Investigation into Southern Bell Telephone and Telegraph Company's Trial Provision of Memory Call Service, Docket No. 4000-U (Ga. PSC June 4, 1991) (Georgia PSC found that: (1) technical barriers to ESP use of the local networks resulted in significantly inferior voice-messaging service; (2) BellSouth's refusal to allow co-location of ESP equipment caused quality and price disadvantages for competitors; and (3) BellSouth had manipulated development of its network in order to maximize its competitive advantage for MemoryCall).

In the context of LEC-provided video service, the incentive to use network facilities to the detriment of competing video programmers and providers is especially strong. In contrast to the concerns the FCC originally had with regard to the market for other enhanced services, LECs here are entering a business where the competition already is intense and a leg up would be eagerly sought. Furthermore, at this point, LEC video transmission capacity is very limited, which compounds the LECs' incentive to favor their affiliated programming.[24]

LECs have demonstrated this propensity to behave anti-competitively toward competing cable operators and programmers in the context of channel lease service and video dialtone, at a point when LEC ownership of programming was not even an issue.

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[24] In fact, while the Commission has issued its Third Further Notice of Proposed Rulemaking in CC Docket 87-266, FCC No. 94-269, released Nov. 7, 1994, at ¶ 268-275, to address alleged video dialtone capacity constraints, CCTA is concerned that such space limitations are, in fact, creations of the LECs designed to skirt the fundamental video dialtone capacity obligations and to set the stage for discrimination in favor of their affiliated or favored video programmers. Significantly, while many LECs have backed away from their initial promises of vast channel capacity, including digital and analog channels, others have not encountered such "technical obstacles." For example, GTE's original Section 214 video dialtone request proposed to provide 80 analog channels and 168 digital channels. Applications of GTE for authority under Section 214 of the Communications Act to construct video dialtone facilities, File No. W-P-C 6957, at 6, filed May 20, 1994. It now states that it will not be able to deliver the digital channels as proposed. <u>See</u> GTE Supplemental Information to its Section 214 Applications, File Nos. W-P-C-6995, at 10-11, filed March 31, 1995. <u>See also infra</u> n.25 and accompanying text. Compare this with Bell Atlantic's Dover, New Jersey video dialtone system, wherein it has committed to offering 384 channels this year. <u>See</u> <u>Application of New Jersey Bell Telephone Co.</u>, 9 FCC Rcd 3677 (1994) <u>pets. for reconsideration pending</u>.

Indeed, on several occasions, CCTA has directed the Commission's attention to Pacific Bell's questionable arrangements with "favored" programmers. For instance, CCTA has previously noted in its comments that Pacific holds an option to purchase the "anchor programmer" of its proposed video dialtone network, to which Pacific has already agreed to lease half of its analog capacity. Moreover, Pacific has proposed that another entity under common ownership with this same programmer manage the system's shared channels.[25]

Pacific's Palo Alto "channel lease" service, the forerunner of its video dialtone service, also presents a vivid example of the risk to competitors and ratepayers from LEC cross-subsidization and anticompetitive behavior.[26] Specifically, Pacific constructed a "leaseback" video transport cable system for an independent cable operator and estimated that the system's annual revenue for the first 15 years would recover its costs and yield a rate of return on Pacific's investment of between 10 and 12.72 percent.[27] Although Pacific's construction costs, in fact, had vastly exceeded its estimate, the company never increased its tariffed rates to the customer.[28] As a result, potential competitors were injured and telephone ratepayers were required

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[25] See Comments of the California Cable Television Association on Third Further Notice of Proposed Rulemaking, CC Docket No. 87-266, at 5-7, filed December 16, 1994.

[26] CCTA March 11, 1994 Reply to Pacific Bell at 39-44.

[27] Id.

[28] Id.

to bear the burden of Pacific's loss. Significantly, this conduct, which violated Pacific's tariff and the FCC's cross-ownership rules, was not prevented by the accounting "safeguards" imposed by the Commission.[29]

In fact, the new competition between cable operators and LECs has resulted in an overall resurgence of LEC anticompetitive behavior that has been clearly documented. For example, the New England Cable Television Association noted that as cable companies have begun to upgrade their networks with fiber optic cable, telephone companies have abused their control over poles and conduits by increasing rates and limiting access.[30] NYNEX, for instance, currently requires cable operators to agree to an amendment to its pole attachment contract that requires operators to seek written permission from NYNEX before fiber can be overlashed.[31] Indeed, NYNEX has so staunchly resisted cable's overlashing with fiber that, in Portland, Maine, it sought the arrest of local cable crews for installing fiber optic lines on cable strand -- for which the operator held legitimate permits from NYNEX.[32]

Similarly, in Massachusetts, the Department of Public Utilities ("MDPU") found that New England Telephone ("NET") had

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[29] Id. at 44.

[30] See Comments of the New England Cable Television Association on Third Further Notice of Proposed Rulemaking, CC Docket No. 87-266, at 14-20, filed December 16, 1994.

[31] Id. at 18.

[32] Id.

set its cable conduit attachment rates at more than twice (and in some instances more that four times) the level that would result under a fully allocated cost methodology.[33] NET was able to maintain its grossly excessive rates for cable conduit attachments for more than eight years (from 1984 to 1992).[34] The record in this case indicated that NET had taken the position that the terms of its contracts with conduit attachers were "non-negotiable", and the MDPU concluded that cable companies had "no choice but to sign the contracts as presented."[35]

LEC incentives to engage in anticompetitive conduct of this sort will increase substantially as the companies spend the billions of dollars required to enter and compete in the video programming market. A notable illustration of the LECs' aggressive move into this business occurred earlier this year when a consortium made up of Pacific Bell, Bell Atlantic, and NYNEX issued a request for proposals on the four million "digital entertainment terminals" it will need to build video networks. By combining their orders for these set-top boxes, the companies hope to take advantage of huge volume discounts from the

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[33] Id. at 18-19.

[34] Id., citing Complaint of Greater Media, Inc., D.P.U. 91-218 pp. 39-40 (1992). Where the cable company's attachment was in a vacant duct, NET effectively doubled the already inflated rate for conduit attachment by charging a full-duct rate even though the cable operator only required use of a half-duct.

[35] Id.

manufacturers.[36] Significantly, these same three BOCs comprise another group that joined with Creative Artists Agency recently for the purpose of producing and distributing video programming.[37] The magnitude of these investments cannot be ignored when assessing the telephone companies' incentive to cross-subsidize and discriminate in access.

Without separate subsidiaries, it will be increasingly difficult to detect LEC anticompetitive behavior. Anticompetitive discrimination can be both overt and subtle, making detection virtually impossible. Thus, LECs could favor their own video programming and services through preferred access to required network functions. For example, they could offer lower rates and physical collocation for LEC ESP equipment. Despite network disclosure requirements, LECs can use the inside knowledge of joint personnel to plan for upcoming network developments. In addition, the use of joint inbound telemarketing and other personnel would give LECs a significant upper hand in launching their cable operations. And, finally, the LECs' preferred access to customer proprietary network information ("CPNI"), such as data on network usage, billing and service generated by video information providers, service data about competing providers on the LEC network, and data about

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[36] Three Baby Bells are Combining Orders of TV Set-Top "Boxes" in Bid to Cut Costs, Wall Street Journal, February 28, 1995, at B5.

[37] Id.

subscribers connected to the network, is inherently discriminatory.[38]

Moreover, while the Court in California III held that the Commission had responded to its concerns about cross-subsidization between regulated and nonregulated services, it did not have the opportunity to consider this issue in the context of cable television services. In fact, the relative inelasticity of the telephone service offering and the often high proportion of common costs reflected in the joint offering of video and telephone transmission service makes the dangers of improper cross-subsidization significantly greater in this situation. The safeguard of separate subsidiaries would at least make it easier to detect cost shifting of this sort.

Most importantly for the Commission's public interest deliberations is the fact that the LECs' ability to leverage their monopoly enterprises to advantage their own programming services first and foremost harms consumers, who will bear the brunt of improper cross-subsidization and who will not receive the true benefits of fair competition. In addition, allowing anticompetitive behavior also injures the independent video programmers who want to use LEC cable facilities, as well as every existing video service provider in the market. CCTA

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[38] In fact, the Commission has recognized that different interests are implicated by CPNI data in the context of LEC provision of video programming than are present with regard to video dialtone service. Telephone Company-Cable Television Cross-Ownership Rules, Reconsideration Order, 10 FCC Rcd. 244, 358-59 (1994).

believes strongly that a fully competitive market is in the public interest. But, handing LECs such an obvious competitive advantage will only result in a distortion of the market, which ultimately will undermine the Commission's pro-competitive goals.

2. The Benefits of the Separate Subsidiary Requirement Outweigh the Detriments

Under the Court's decision in California III, lifting the separate subsidiary requirement would be lawful only if the Commission can demonstrate that the benefits of a nonstructural approach outweigh the risks of anticompetitive behavior.[39] As shown above, the risks of such behavior are substantial. In contrast, the benefits are minimal.

In Computer III and the BOC Safeguards Order,[40] the Commission contended that the costs of structural separation were the discouragement of innovation and the prevention of efficiency. In particular, it stated that, by not requiring separate subsidiaries, the BOCs would be able:

> to use existing marketing contacts with virtually every household within their regions to market enhanced services to consumers inexpensively, to use the same personnel to repair and install the services and equipment necessary to provide basic and enhanced services, and to use their expertise to engage in research and development for enhanced services.[41]

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[39] California III, 39 F.3d 919.

[40] BOC Safeguards Order, 6 FCC Rcd. 7571.

[41] Id. at 7575.

As noted previously, when first presented with the Commission's cost-benefit analysis, the Ninth Circuit Court of Appeals "was less than laudatory in [its] assessment of the FCC's analysis of the costs of structural separation and expressed concern that the only concrete example the FCC used to support its cost analysis was voice mail."[42]

Whether or not the FCC overemphasized the importance of voice mail in relation to the multitude of other enhanced services, however, that analysis is simply not applicable to the video programming market. First, in contrast to the need originally identified in Computer III to increase the vibrancy of the enhanced services market, competition in the market for video services is flourishing. There are many entities that seek to bring video-related services to consumers and new applications are continually being proposed and introduced. Given this competitive environment in relation to the potential for significant LEC abuse, there is simply no need to forego the important safeguard of structural separation.

Likewise, there has been no showing that any legitimate joint economies or efficiencies will exist if the LECs proceed without establishing fully separated subsidiaries for their video operations. The activities of a video programmer -- packaging, tiering, video program production -- are not dependent on, or related to, the functions that a LEC performs as a regulated

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[42] California III, 39 F.3d at 925 (referring to the Court's earlier discussion in California I).

carrier. Indeed, unlike voice mail or other similar enhanced services, which are dependent on basic network functions, there is no such "efficient" relationship with the provision of video programming. Thus, even if valid in other contexts, LEC statements that providing enhanced services on a non-integrated basis would increase costs are not pertinent here.

In fact, any purported LEC showing of "efficiencies" in this context would likely be based entirely on improper conduct that results from the desire to gain an unfair advantage over the competition. As noted above, there is no legitimate reason to permit carriers to leverage their pre-existing marketing arrangements with customers or to use their expertise in research and development to create new services or changes in network design that will aid their video operations.[43]

Furthermore, the Commission's concerns about the costs of converting an integrated entity to a structurally-separated system are nonexistent here since LECs are just beginning to enter the video programming business. Accordingly, there will be

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[43] Even if regulated as cable operators under Title VI, LECs will still have significant advantages in the marketplace. For example, as the competitors in the cable market, LECs will not be subject to rate regulation, which gives them tremendous price flexibility to respond to market forces. Similarly, LECs will not be bound by the constraints on tiering that currently prevent cable operators from structuring their program offerings in response to market demand. For example, "Bell Atlantic, along with other telcos, is investing billions in broadband video networks and is banking on the assumption that consumers will want to move away from their cable company and pay for TV services via an a la carte pricing model." See Berniker, Bell Atlantic Lines Up Product for VOD Trial, Broadcasting & Cable, March 13, 1995, at 14.

no transitional expenses borne by LEC video customers or disruptions in service or customer confusion. As such, it is all the more important that the Commission act promptly at this juncture to require separate subsidiaries.

C. Safeguards Beyond Structural Separation are Necessary

The separate subsidiary requirement of Computer II contemplated the offering of common carrier capacity under tariff to providers of enhanced services, including telephone company-owned ESPs. That same basic tenet should apply in the situation where LEC subsidiaries provide video services.

Beyond structural separation, there are other rule changes necessary to protect customers and competitors from anticompetitive behavior. In particular, there is no basis for permitting telephone company video programmers to have automatic access to CPNI,[44] while denying competitors access unless the customer affirmatively requests that it be granted. To have a truly fair and open video marketplace, it is imperative that access to CPNI for video service activities be granted on an absolutely nondiscriminatory basis.

In addition, regardless of whether the LEC video service provider is operating through a separate subsidiary, the Commission should prohibit the inbound telemarketing of basic telephone service and LEC video operations. The FCC should also consider developing rules to give competing programmers using LEC

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[44] See supra n.38.

facilities equal access to network related services such as billing and collection.

IV. Conclusion

CCTA recognizes that structural separation will not remove the incentives for potential LEC anticompetitive behavior in the provision of in-region cable service. Nevertheless, because separate subsidiaries will enhance the ability of regulators to track the flow of services and money, this safeguard will significantly dampen LEC incentives to discriminate against competitors and to cross-subsidize. As demonstrated above, a fresh cost-benefit analysis leaves little doubt that structural separation in this context will result in a much more equitable and open market, without sacrificing innovation or efficiency.

For all of the reasons set forth above, CCTA respectfully requests the Commission to impose structural separation in the context of LEC-provided video programming services.

Respectfully Submitted,

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April 7, 1995
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CERTIFICATE OF SERVICE

I, James Waddy, hereby certify that on this 7th day of April, 1995, I caused copies of the foregoing Comments of The California Cable Television Association in CC Docket 95-20 to be sent by First Class mail, postage prepaid, or to be delivered by messenger (*) to the following:

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